Supreme Court, U.S.
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No.88-1830

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

DONALD CRAIG MITCHELL,

Petitioner,

v.

THE STATE OF ALASKA,

Respondent.

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

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## Questions Presented

1. Whether an important federal question is presented by a claim that campaign contributions made to a candidate by parties who are not residents of the candidate's district violate the Guaranty Clause, U.S. Const. art. IV, sec. 4.

2. Whether an important federal question is presented by a claim that a statute is "state action" for equal protection analysis, when the statute does not address the challenged conduct.

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## Opinions Below

The unreported opinion of the Alaska Supreme Court is reprinted in petitioner's Appendix.

Petitioner's Appendix does not include the final Superior Court decision in this case. Order Granting State's Motion to Dismiss, Oct. 6, 1987 (Shortell, J.). The missing opinion is attached. Appendix A.

## STATEMENT

The State of Alaska's population has quadrupled since Territorial days - from 129,000 (1950 Census) to 534,000 (1980 Census). The increase in population and accompanying economic growth has led to great changes in many areas, including politics.

Petitioner notes correctly that the cost of campaigning for political office in Alaska has increased substantially since statehood. R. 280. The record indicates that a number of factors contributed to this phenomenon. One factor is simply the rise in population itself. R. 171(g) - 171(h). Another is a marked decline in party loyalty. Id. Another is the cost of modern media, which is extremely expen-

sive compared to the "friends and neighbors politics . . . common throughout the territorial period and in the early years of statehood." R. 866-869. Candidates fear being outspent by their opponents. As one candidate raises money, his or her opponent scrambles to catch up, creating an increasing spiral of campaign costs. R. 274.

Money flows into Alaska campaigns from a variety of sources. Petitioner's witness characterized certain of these sources as the "wraithful [sic] moneybags who professionally finance election campaigns": unions, corporations, political action committees, lobbyists and other special interests. R. 276. Many contributors

are not voting residents of any given election district (e.g., corporations, political action committees) or are not voting residents of the election district in which their chosen candidate is running (e.g., lobbyists).

The record indicates that campaign contributions flow into and out of election districts in Alaska. R. 19-20, 775. But, the record does not link the geographic origin of contributions per se with any unusually corrupting effect on elected officials. Contributions from outside a candidate's district are made for the same reasons as those from inside: belief that the candidate is the best person for the job, dislike of the opposing candidate, agreement with the candidate's position

on the issues, and hope of "access" or "influence" after the election. See, e.g., R. 276.

As petitioner notes, the Alaska Campaign Disclosure Act limits contributions from a single source to a given candidate to $1,000 annually, and imposes certain disclosure requirements on both contributors and candidates. AS 15.13. The Alaska Act does not, however, speak to the geographic origin of campaign contributions. Id.

## ARGUMENT

### 1. An important federal question is not presented by petitioner's claim that contributions to a candidate by those who are not residents of the candidate's district violates the Guaranty Clause, U.S. Const. art. IV, sec. 4.

The Guaranty Clause of the United States Constitution provides:

> The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

U.S. Const. art. IV, sec. 4.

Alaska's government is in "a republican form." It is composed of an executive branch, a bicameral legislature, and an independent judiciary.

See generally Alaska Constitution. The United States Congress has affirmatively declared Alaska's government "to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence." Alaska Statehood Act sec. 1, P.L. 85-508 (72 Stat. 339), 48 U.S.C.A. (notes preceding) 21 (1959). Petitioner argues that campaign contributions from sources outside his election district are used to persuade voters to support candidates running for office. He claims that once elected, officials who accepted contributions from outside petitioner's district do not truly "represent" him, but instead "represent" those who gave them money.

Therefore, he concludes, Alaska's government is not "republican in form," in violation of the Guaranty Clause. This theory has never been adopted by any court of record in the United States.

Petitioner maintains that this alleged violation of the Guaranty Clause impairs (inter alia) his right to vote, his freedom of association, and his right to equal protection of the law. However, this Court has repeatedly "refused to resort to the Guaranty Clause - which alone had been invoked for the purpose - as the source of a constitutional standard for invalidating state action." Baker v. Carr, 369 U.S. 186, 223 (1962). Simply put, the Guaranty Clause does not pro-

vide a judicial remedy for an alleged violation of individual rights. Id. at 224; see generally L. Tribe, Constitutional Law 397-98 (1988) ("The 'Republican Form of Government Clause' . . .") (argues that Guaranty Clause provides a last bulwark of protection for state sovereignity, not for individual rights).

Moreover, the Alaska Supreme Court correctly held that the question of prohibiting the campaign contributions at issue was nonjusticable - it is one of those "certain questions involving coordinate branches of government, sometimes unhelpfully called political questions, that the judiciary will decline to adjudicate." Abood v. Gorsuch, 703 P.2d 1158, 1160 (Alaska 1985)

(citing Baker v. Carr). Determining whether the "political question doctrine" applies requires a case-by-case analysis. Id.

The present case concerns election procedures, which are "textually committed" to the Alaska legislature. See Alaska Constitution art. II, sec. 1 and art. V, sec. 3; Silides v. Thomas, 559 P.2d 80, 89 (Alaska 1980); Baker v. Carr at 217. It would be impossible for a court to grant the relief requested "without expressing lack of respect due coordinate branches of government" and "without an initial policy determination of a kind clearly for nonjudicial discretion." Id. Thus, this case is nonjusticable. Baker v. Carr.

Alaska has "a republican form of government" quite similar to that found in every other state. Petitioner's convoluted theory that campaign contributions made by contributors who are not voters in his election district somehow destroys the "republican form" of Alaska's government does not pose an important question of federal law for this Court's review.

2. An important federal question is not presented by petitioner's claim that the silence of the Alaska Campaign Disclosure Act on the subject of contributions from outside election districts is "state action" for equal protection analysis.

The Alaska Campaign Disclosure Act is utterly silent on geographic origins of campaign contributions. AS 15.13. There are no provisions in Alaska law which either permit or prohibit the contributions petitioner finds offensive. Id. The state regulatory agency charged with enforcing the Act, the Alaska Public Offices Commission, has no regulations on the subject. See generally Alaska Admin. Code tit. 2 secs. 50.010 - 50.920 (October 1988). The State of Alaska does not make campaign contributions, either alone or

in conjunction with any other party. It is not alleged otherwise in petitioner's complaint.

Campaign contributions are gifts of private money by private parties to private individuals who chose to run for elected office. In order for a private contributor's conduct to be "state action" for equal protection purposes, there must be a sufficiently close nexus between the State and the challenged action of the contributor "so that the action of the latter may be fairly treated as that of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974). The State of Alaska takes no part in the decision by any contributor to give

money to the campaign of any individual running for office.

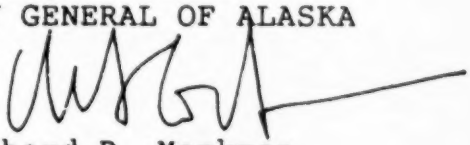
Thus, there is an insufficient nexus between the State of Alaska and the private parties who make contributions across election district lines for those acts to be considered "state action" for equal protection purposes. Id. The Alaska Supreme Court's decision was correct. Petitioner has not raised an important question of federal law which merits review by this Court.

## CONCLUSION

The petition for certiorari should be denied for lack of an important federal question.

Dated this 2 day of June, 1989, at Juneau, Alaska.

DOUGLAS B. BAILY
ATTORNEY GENERAL OF ALASKA

By: 
Richard D. Monkman
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**APPENDIX A**

IN THE SUPERIOR COURT FOR THE
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

DONALD C. MITCHELL, )
)
Plaintiff, )
)
vs. )
)
STATE OF ALASKA, )
)
Defendant. )
)
Case No. 3AN-85-10473 CIV

ORDER GRANTING STATE'S MOTION TO DISMISS

The State's Motion to dismiss is hereby granted as to all claims raised in plaintiff's first amended complaint. To the extent that, because of factual material submitted by both parties, this motion should be characterized as a motion for summary judgment, the motion is granted pursuant to Rule 56. Final judgment dismissing the case

shall issue immediately; although issues relating to the payment of attorneys' fees shall be decided after motion(s) have been submitted.

DATED at Anchorage, Alaska this 6th day of October, 1987.

/ss/ Brian Shortell
BRIAN SHORTELL
SUPERIOR COURT JUDGE